IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.823 OF 2006

Eknath Rajaram Barawkar & Anr. .. Appellants.
Vs.
Tai Baban Shende & Ors. .. Respondents.

Mr.Sanjay Kshirsagar for the appellants.
Mr.P.J.Pawar for respondent nos.1 to 3.

CORAM : D.B.BHOSALE, J.

DATED : 31ST JANUARY, 2007

P.C.:

. Heard learned counsel for the parties.

2. Mr.Kshirsagar, learned counsel for the appellants submits that pending these proceedings the respondent - plaintiff has executed a sale deed in respect of Gat No.851 in favour of Vishwanath Tukaram Bhomb and in view thereof he has instructions from the appellant, who is present in the court, to withdraw the second appeal with liberty to the appellants to file a suit for appropriate reliefs against Vishwanath Bhomb. He further submitted that the declaration in respect of the sale deed be set aside since no such declaration was sought. I find no difficulty in allowing the appellants to file suit as aforestated. However, it would not be appropriate to interfere with

the impugned judgment even to the extent as prayed for by Mr.Kshirsagar. The order declaring the sale deed illegal was consequential, in the facts and circumstances of the case. In the circumstances I pass the following order:

. This appeal is allowed to be withdrawn with liberty to the appellants to file a suit for appropriate relief against Vishwanath Tukaram Bhomb. However, it shall not be open for the appellants to seek any relief against the plaintiffs in the present suit. If such a suit is filed same may be decided on merits in accordance with law. With these observations second appeal stands disposed of as withdrawn.

(D.B.Bhosale, J.)